



W.A.Nos.701 of 2021 etc., and batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.07.2024

PRONOUNCED ON : 31.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

and

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.Nos.701, 709, 711, 712, 719, 721, 723, 725, 726, 729, 733, 734, 735,
739, 740, 742, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755,
756, 757, 758, 759, 760, 763, 764 & 766 of 2021

and

C.M.P.Nos.3891, 3916, 3920, 3924, 3937, 3942, 3949, 3953, 3955, 3960,
3986, 3990, 3994, 4030, 4035, 4039, 4044, 4045, 4046, 4048, 4049, 4050,
4053, 4055, 4056, 4057, 4058, 4060, 4061, 4062, 4063, 4064, 4066, 4083,
4085, 4089 of 2021

**[W.A.No.701 of 2021 and
C.M.P.No.3891 of 2021]**

The Secretary
Tamilnadu Legislative Assembly,
Fort St. George, Chennai-600009

... Appellant

Vs.

1. P.Sivakumar @ Thayagam Kavi
Member Of Legislative Assembly,
Thiru-Vi-Ka Nagar Constituency
Tamilnadu Legislative Assembly
Chennai-600009



W.A.Nos.701 of 2021 etc., and batch

2. The Speaker,
Tamilnadu Legislative Assembly,
Fort St. George, Chennai-600009

3. Privileges Committee,
Rep. By Its Chairman,
Tamilnadu Legislative Assembly,
Fort St. George,
Chennai-600009

4. Mr.V.Jayaraman,
Chairman,
Privileges Committee,
Tamilnadu Legislative Assembly,
Fort St. George, Chennai-600009

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the Judgment dated 10.02.2021 passed in WP No.13193 of 2020.

For Appellant in
W.A.Nos.701, 709,
711, 712, 719, 721,
723, 725, 726, 729,
733, 734, 735, 739,
740, 742, 744
& 747 of 2021

And

For Appellants in
W.A.Nos.745, 746,
748 to 760, 763,
764 & 766 of 2021

: Mr.P.S.Raman, Advocate General
assisted by Mr.A.Selvendran,
Special Government Pleader.



W.A.Nos.701 of 2021 etc., and batch

(1) For Respondents in
W.A.Nos.701, 709, 711, 712,
719, 721, 723, 725, 726, 729,
733 to 735, 739, 740, 742, 744 to
760, 763, 764 & 766 of 2021 : Mr.N.R.Elango, Senior Counsel for
M/s.Manuraj (for R1)

(2) For Respondents in
W.A.No.701, 709, 711, 712,
719, 721, 723, 725, 726, 729,
733, 734, 735, 739, 740,
742, 744 & 747 of 2021 : Mr.V.Ragavachari, Senior Counsel
for Mr.I.S.Inbadurai and
Mr.P.S.Siva Shanmugasundaram
(for R4)

(3) For Respondents in
W.A.Nos.745, 746, 748 to 760,
763, 764 & 766 of 2021 : Mr.P.S.Raman, Advocate General
assisted by Mr.A.Selvendran,
Special Government Pleader (for R3)

(4) For Respondents in
W.A.Nos.745, 746, 748 to 760,
763, 764 & 766 of 2021 : Mr.A.Selvendran,
Special Government Pleader (for R2).

(5) For Respondents in
W.A.Nos.701, 709, 711, 712,
719, 721, 723, 725, 726, 729,
733, 734, 735, 739, 740,
742, 744 & 747 of 2021 : Mr.A.Selvendran,
Special Government Pleader
(for R2 & R3)



S.M.Subramaniam J.

S.No.	Contents		Paragraph Nos.
I	PRELUDE		1 to 8
II	CONTENTIONS ON BEHALF OF THE PARTIES		9 to 14
III	DISCUSSIONS		15 to 52
	a	PREMATURE CHALLENGE OF THE SHOW CAUSE NOTICE	15 to 35
	b	IMMUNITY TO THE LEGISLATIVE ASSEMBLY PROCEEDINGS OF PROCEDURAL IRREGULARITIES	36 to 38
	c	MECHANISM TO REGULATE THE SMOOTH FUNCTIONING OF THE HOUSE	39 to 42
	d	THE POWERS OF THE LEGISLATIVE ASSEMBLY TO REGULATE ITS OWN PROCEDURE	43 to 43
	e	MALICE AS A GROUND FOR QUASHING SHOW CAUSE NOTICE	44 to 49
	f	PROVISIONS UNDER WHICH SHOW CAUSE NOTICE WAS ISSUED	50 to 52
IV	CONCLUSION		53 to 63



W.A.Nos.701 of 2021 etc., and batch

(I) PRELUDE:

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The Show Cause Notice, originally issued by the Secretary Tamil Nadu Legislative Assembly, to the then members of the opposition party, were previously under challenge and the Division Bench of this Court, through common order dated 25.08.2020, set aside the Show Cause Notice, granting liberty to the Tamil Nadu Legislative Assembly to issue fresh Notice in compliance with the Tamil Nadu Legislative Assembly Rules.

2. Consequently, second Show Cause Notices (herein after referred as 'SCN') were issued to the respondents in the present writ appeals on 07.09.2020, on the issue of breach of privileges calling upon them to submit their respective explanations. The second 'SCN' issued to the respondents herein were under challenge before the Writ Court. The Writ Court allowed the writ petitions by setting aside the 'SCN' issued to the respondents, which resulted in institution of present intra-court appeals by the Secretary, Tamil Nadu Legislative Assembly.

3. The learned Advocate General, Mr.P.S.Raman contended that the 'SCN' became lapsed on account of expiry of the term of the Assembly in the year 2021. Therefore, the 'SCN' need not be proceeded with. This Court



W.A.Nos.701 of 2021 etc., and batch

intervened on the ground that the 'SCN' had been issued by the Privilege Committee and admittedly the proceedings have not reached finality.

4. The question arises, whether the High Court, in exercise of the powers of judicial review, can set aside the 'SCN' issued by the Legislative Assembly on the issues relating to breach of Privileges of the House? The learned Advocate General, with all fairness, would submit that un-concluded proceedings of this nature cannot be set aside by the High Courts. It is the 'SCN' issued calling upon explanations from the members on the issues relating to breach of privileges and it must be concluded in all respects.

5. The power of judicial review of the High Court, its scope, is the issue to be deliberated by this Court. The relevance and importance of concluding the issues relating to breach of privileges of the House, under the Constitutional perspective, is to be considered by this Court. Undoubtedly, setting aside the 'SCN' issued by the Privilege Committee of the Tamil Nadu Legislative Assembly would set a bad precedent and result in opening of an avenue to many similarly placed persons to challenge 'SCN' relating to breach of privileges of the House by way of writ petition before the High Courts. In the context of the above views expressed by this Court, the



W.A.Nos.701 of 2021 etc., and batch

learned Advocate General would submit that this Court may remand the matter back to the Legislative Assembly for consideration and to take an appropriate decision. Therefore, this Court has to necessarily adjudicate certain important issues involved in the impugned 'SCN' and the impugned writ order. The legality of the impugned writ order is to be considered by this Court in order to enumerate the legal position regarding breach of privilege proceedings initiated by the Legislative Assembly.

6. The 'SCN' dated 07.09.2020 deliberates the following issues:

- (a) Showing Gutka sachets without permission of the Hon'ble Speaker
- (b) Interrupting the smooth proceedings of the Assembly
- (c) Setting a bad precedent
- (d) Creating utter commotion and chaos resulting in disturbing the

Assembly proceedings.

7. On four grounds the second 'SCN' was issued to 19 then members of the Assembly. Instead of submitting explanations to the House, the members have chosen to file writ petitions. The learned Single Judge set aside the 'SCN' and therefore, it becomes necessary for this Court to deliberate the grounds on which the 'SCN' are set aside.



W.A.Nos.701 of 2021 etc., and batch

8. With reference to the grounds raised for issuance of 'SCN', it is relevant to look into Chapter XIV, General Rules of Procedures, the Tamil Nadu Legislative Assembly Rules. Rules 87 and 92 are extracted herein:

“87. A member present at a sitting of the House and not speaking-

(i) shall not read any newspaper except in connection with the business of the House;

(ii) shall maintain silence;

(iii) shall not interrupt a member while speaking by disorderly expressions or noise or in any other disorderly manner;

(iv) shall bow to the Chair when taking or leaving his seat;

(v) shall not pass between the Chair and any member who is speaking;

(vi) shall not stand in the House when the Speaker is addressing the House;

(vii) shall not obstruct the proceedings hiss or interrupt and avoid making running commentaries when speeches are being made in the House;

(viii) shall not while speaking make any reference to the strangers in any of the galleries;

(ix) shall not applaud when a stranger enters any of the galleries unless a reference is made to his presence from the Chair; and



W.A.Nos.701 of 2021 etc., and batch

(x) *Members shall not carry any Mobile Phones into the House.*”

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“92. A member, while speaking must not-

(i) *give his opinion about or refer to any matter on which a judicial decision is pending;*

(ii) *make a personal charge against a member;*

(iii) *use offensive expression about the conduct of proceedings of the Parliament or any State Legislature;*

(iv) *reflect on any decision of the House except on a motion for rescinding it;*

(v) *reflect upon the conduct of the Speaker, except on a substantive motion for his removal;*

(vi) *reflect upon the office of the Speaker or attribute any motive to the Legislature Secretariat;*

(vii) *reflect upon the conduct of President or any Governor or any Court of Justice or use the Governor's or President's name for the purpose of influencing a debate;*

(viii) *utter treasonable, seditious, defamatory or unparliamentary words; or*

(ix) *use his right of speech for the purpose of obstructing the business of the Assembly.*”

(II) CONTENTIONS ON BEHALF OF THE PARTIES:



W.A.Nos.701 of 2021 etc., and batch

9. The learned Advocate General, Mr.P.S.Raman, appearing on behalf of the appellants would submit that the Show Cause Notice proceedings became lapsed on account of expiry of the term of the Assembly and therefore, there is nothing to proceed. However, the learned Advocate General admitted the fact that disciplinary matters may not die on account of the expiry of the term of the Assembly. In this context, this Court debated the issue with the learned Advocate General who in turn, relying on the full Bench Judgement of the Madras High Court and the judgement of the Hon'ble Supreme Court in the case of *Amarinder Singh vs. Special Committee, Punjab Vidhan Sabha*¹, formed an opinion that the disciplinary proceedings initiated by the Privilege Committee against the members, would not lapse on account of expiry of the term of the Assembly.

10. Mr.N.R.Elango, learned Senior Counsel appearing on behalf of the contesting respondents / writ petitioners would contend that the proceedings became lapsed. There is no scope for continuance of the Show Cause Notice proceedings in the present case. Mr.N.R.Elango relied on certain observations made by the Full Bench of the Madras High Court in the case of *A.M.Paulraj vs. The Speaker Tamil Nadu Legislative Assembly &*

¹ 2010 (6) SCC 113



W.A.Nos.701 of 2021 etc., and batch

Ors.¹. The observations relied on by Mr.N.R.Elango are that the entire business of the Assembly is treated to be lapsed on expiry of the term.

11. The case of **Amrindar Singh** is relied on so as to emphasise that the parliamentary proceedings would lapse on account of expiry of its term. Paragraph no.71 of the judgement in **Amrindar Singh's** case, provides the literal meaning of “*dissolution*” as listed in Black's law dictionary. In paragraph no.72, the effect of dissolution has been discussed and thereafter, the business before a committee has been considered by the Hon'ble Supreme Court. It is observed that “*all business pending before Parliamentary Committees of Lok Sabha lapse on dissolution of Lok Sabha. Committees themselves stand dissolved on dissolution of Lok Sabha. However, a committee which is unable to complete its work before the dissolution of a House may report to the House to that effect, in which case, any preliminary memorandum or note that the committee may have prepared or any evidence that it may have taken is made available to the new committee when appointed.*”

1 AIR 1986 Madras 248



W.A.Nos.701 of 2021 etc., and batch

This principle has also been affirmed in the practice and procedure of Parliament by M.N.Kaul and S.L.Shakdher.

12. Relying on the above judgements and the practice and procedure of Parliament, Mr.N.R.Elango re-emphasised that the Show Cause Notice proceedings became lapsed and there is nothing to proceed with and therefore, the writ appeals are to be rejected.

13. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of Mr.V.Jayaraman, / 4th respondent would oppose that the disciplinary matters initiated against the members would not lapse even after the expiry of the term of the Assembly. Mr.V.Raghavachari raised a question in the event of committing indiscipline, misconduct or violation of Assembly Rules during the end of the Assembly tenure, Can such conducts be condoned or can such member be exonerated from the proceedings of the Privilege Committee? Carving out certain circumstances, which may arise during the end of the term of the Assembly and certain misconducts, indiscipline or violations, if any committed by the member, at no circumstances be condoned nor such member can be exonerated without subjecting the issue to



W.A.Nos.701 of 2021 etc., and batch

undergo the process of inquiry through Privilege Committee under the Assembly Rules. Even the *A.M.Paulraj's* case supports the proposition that disciplinary matter will not lapse on account of expiry of the term of assembly. The facts in the *Amrindar Singh's* case are distinguishable and in the present case, Show Cause Notice itself is under challenge.

14. Mr.V.Raghavachari would contend that if Show Cause Notice was issued duly in compliance with the Assembly Rules by the Privilege Committee and on account of the lis pendency before this Court, the committee was not in a position to conclude the proceedings. Therefore, the period in which the litigations were pending before the High Court, cannot be a ground to claim that the proceedings are lapsed. Breach of privilege proceedings, initiated under the Assembly Rules, must reach its conclusion and therefore, the matter is to be remanded back to the Privilege Committee for deciding the issues in accordance with law.

(III) DISCUSSIONS :



W.A.Nos.701 of 2021 etc., and batch

(a) Premature challenge of the Show Cause Notice:

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15. The order passed by the learned Single Judge suffers from absence of consideration of material facts and contentions. The Order is patently erroneous as the Order failed to consider the argument of premature filing of the Writ Petition at the stage of issuance of 'SCN' itself. It is pertinent to note that the 'SCN' was issued by the Privilege Committee which is not the final authority in itself but is only a recommending authority. The Committee is only empowered to file a report based on its recommendation and that is subject to further deliberations by the Assembly. So, in essence they have only called for an explanation for the alleged breach of privilege in the Legislative Assembly.

16. The present 'SCN' was issued subsequent to the order of the Hon'ble Division Bench of this Court in its order dated 25.08.2020 which has clearly held as follows:

“71. What we intend to clarify is that carrying of Gutkha sachets simpliciter may or may not be a breach of privilege, which is still open to examination by the Committee of Privileges, but to hold that the passage of the Gutkha sachets inside the House amounted to transportation or storage or possession for consumption is certainly not made out on the



W.A.Nos.701 of 2021 etc., and batch

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facts, as are admitted between the parties and also from the Minutes recorded by the Speaker on 19.7.2017 as well as from a perusal of the impugned notice dated 28.8.2017. A perusal of the notification dated 23.5.2017 would leave no room for doubt that the words used are ban of manufacture, storage, sale or distribution of Pan Masala. The reason given in the preamble of the notification is that since Gutkha and Pan Masala are food products which are supposed to be used by keeping it inside the mouth and chewing it, the same becomes part of the human digestive system, as the chemicals go into the saliva while chewing and consequently, its consumption may endanger human health and well-being. It is for this reason and for the well-being of the current and future generations that prohibition of manufacture, storage, transport, distribution or sale has been imposed. As already noted above, the petitioners were not carrying out any such activity with the intention of promoting chewing and consumption of Pan Masala, but were rather raising their voice in support of the notification and for its rigorous implementation. As explained in the case of Bijaya Kumar Agarwala (supra), every possession is not storage, nor can it amount to a transport at least in terms of the notification on the facts of the present case, as it is not the case of the respondents that Gutkha was being brought inside the House for consumption. The words used



W.A.Nos.701 of 2021 etc., and batch

WEB COPY

in the notification, in our opinion, have to take colour from the purpose and the conduct of the petitioners, in order to construe as to whether such an act will qualify as prohibition or not. The intendment in the notification is to ban trade of Gutkha and not to ban the freedom of speech, if it is utilized for the purpose of promoting the ban. The notification entails penal consequences and, therefore, it has to be construed strictly to achieve the purpose of the notification, namely, the ultimate protection of human life through a ban on its manufacture, sale, etc.”

17. The learned Single Judge rejected the contention of premature challenge to the 'SCN' on the ground that the matter was already agitated and dealt with by the Hon'ble Division Bench of this Court and that it cannot be re-agitated. This observation is unacceptable as the present notice under challenge was issued consequent to the Judgement of the Hon'ble Division Bench of this Court.

18. The learned Single Judge has specifically extracted and relied on only the second portion of paragraph 71 whereas the entire portion of paragraph 71 must be read in whole to comprehend the observations of the



W.A.Nos.701 of 2021 etc., and batch

Hon'ble Division Bench. The Bench has clearly clarified that the aspect of carrying gutka sachets may or may not be a breach of privilege and the Hon'ble Bench did not venture into that argument, instead they confined themselves only to the question of interpretation of the notification dated 23.05.2017. This can be understood from the Directions issued by the Hon'ble Division Bench. Further the Hon'ble Bench has explicitly left it to the Committee of Privileges to deliberate upon the issue in case it is of the opinion that breach has been committed. This can be clearly understood from the Directions issued by the Hon'ble Division Bench, and the relevant portion is as extracted below:

“106. Having considered all the submissions raised and in view of what has been stated herein above, our conclusions are:

i. The issuance of the impugned notice of breach of privilege dated 28.8.2017, based on the incident dated 19.7.2017, suffers from a foundational error of assuming the conduct of the petitioners to be prohibited by the notification dated 23.5.2017, and we hold accordingly. The petitioners cannot be proceeded against on the strength of the impugned notices dated 28.8.2017 by treating their conduct on 19.7.2017 of displaying Gutkha



W.A.Nos.701 of 2021 etc., and batch

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sachets and photographs as being violative of any prohibitory law particularly the Notification dated 23.5.2017.

ii. Our conclusion aforesaid is confined only to the interpretation of the notification dated 23.5.2017 vis-a-vis the specific conduct of the petitioners inside the House that was made the basis for the issuance of notice of breach of privilege and is not to be construed as an interpretation regarding a prosecution or trial of any offence before a competent forum arising out of the notification dated 23.5.2017.

iii. We leave it open to the Committee of Privileges, if it so chooses, to deliberate upon the issue any further in case it still is of the opinion that any breach has been committed of the privileges of the House by the petitioners and in that event, the petitioners will be at liberty to raise all such objections that have been raised before us, or even otherwise available in law.”

19. Furthermore, the question of breach of privilege was not deliberated upon by the Division Bench and was left to the wisdom of the Committee of Privileges. This was expressly clarified by the Hon'ble Bench in paragraph no. 63 of its Order:



W.A.Nos.701 of 2021 etc., and batch

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"63. The second question as to whether otherwise there was a breach of privilege or not is a matter, in our opinion, within the realm of the House, for which the Privileges Committee can proceed to answer the same. This may also involve an issue of propriety or impropriety of diction or of conduct that may be just unsuitable, unseemly or unbecoming and may not cross barriers of the principles of breach of privilege. The question of pure illegality can however be examined by the Court for the reasons set out herein under".

20. This has been further reaffirmed in its findings as follows:

"105. (iii) The question of propriety, impropriety or otherwise assessing the conduct of the breach of privilege is within the powers of the House, as explained in paragraph 63 and other observations herein above".

21. In the preceding paragraphs of the Hon'ble Division Bench Order, it clearly states that a motion of breach of privilege is only to maintain the dignity of the House and uphold its high traditions in the conduct inside the House and to constitutionally protect its Members and that the alleged breach is an issue to be examined by the Committee of Privileges.



W.A.Nos.701 of 2021 etc., and batch

22. The learned Single Judge brushed aside the argument of premature challenge of 'SCN' by invoking the reasoning that the Hon'ble Division Bench has already dealt with this question. But nowhere in its order has the Division Bench ascribed the proposition of premature quashing of 'SCN'. To the contrary, the Division Bench by relying upon various Judgements of the Hon'ble Supreme Court had in essence held that premature challenge at the stage of issuance of 'SCN' must not be entertained.

23. In the case of ***L.N.Phulkan and Ors v. Mahendra Mohan Choudhury and Ors.***¹, it was observed that:

“20. In the above case it was clearly laid down that even if the powers and privileges claimed and the immunities conferred by Article 194(3) of the Constitution are repugnant to the fundamental right, they will not be void to the extent of the repugnancy. The contention raised in this case on behalf of the Petitioner was that he had a fundamental right under Article 19 of the Constitution and by issuing a notice calling upon him to show cause as to why he should not be dealt with for the breach of the privilege of the House his fundamental right has been affected. This was repelled. Even in the majority opinion of the Supreme Court

¹ AIR 1965 Assam and Nagaland 74



W.A.Nos.701 of 2021 etc., and batch

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*it has been held that the observations in the case of AIR 1959 SC 395 were confined to the case of a fundamental right under Article 19 of the Constitution. **Once it is found that the House has got a right to deal with its own contempt or breach of privilege, the notice issued by the Privileges Committee cannot be said to be without jurisdiction and thus the Petitioners will not be entitled to any writ of prohibition. In our opinion thus the Petitioners are not entitled to any relief at this stage of the proceedings both on the ground that the quashing of the notice will amount to the quashing of the proceedings of the House which the courts of the land are precluded from doing in view of the provisions of Articles 212 and 194(2) of the Constitution and also on the ground that the House having the power to take action for the breach of its privileges, it must be left to the House itself to determine whether there has in fact been any breach of its privileges and the court will not at this stage interfere with the exercise of such a power by the Privileges Committee. In this view of the matter it is not necessary for us to go into the question whether the report or the Commissioner in the circumstances of the present case can or cannot be said to be a proceeding or a document of the House and further whether on the face of it the publication constitutes the contempt of the House or not.***



W.A.Nos.701 of 2021 etc., and batch

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13. Regarding the question raised as to the right of the Petitioners to approach this Court under Article 226 of the Constitution it is sufficient to point out that if we had held that the notice was without jurisdiction, obviously the Petitioners against whom the notice was issued, had every right to approach this Court under Article 226 of the Constitution for the quashing of the proceedings arising out of the said notice. In the result, therefore, we reject these petitions. But in the circumstances the parties will bear their own costs.? ”

24. It is noteworthy that the Hon'ble Supreme Court on multiple occasions has clearly laid out the policy of non-interference by Courts at the time of issuance of 'SCN'. Unless there is a specific ground of Jurisdictional error, the Courts normally refrain from interference at the stage of issuance of 'SCN'.

25. The learned Single Judge ought to have deliberated on the issue of premature challenge of the 'SCN' but instead had refrained from discussing this contention and had concluded that the same contention was raised before the Division Bench of this Court and that the question of maintainability cannot be re-agitated. This reasoning is clearly unacceptable as;



(C) The Division Bench only deliberated on the issue of substantive illegality and not procedural irregularity. The Scope of judicial review extends only to the acts of illegality inside the Assembly and does not extend to the acts of procedural irregularity.

The aforementioned vital points have not been taken into consideration by the learned Single Judge hence warranting the interference of this Court.

26. More specifically, in issues pertaining to the conduct of Members inside the Assembly, where the scope of Judicial review is to be applied



W.A.Nos.701 of 2021 etc., and batch

sparingly by virtue of the wordings in Articles 212 and 194(3) of the Constitution of India, the interference of the Courts at the very initial stage of issuance of 'SCN' is unwarranted.

27. The Hon'ble Division Bench of this Court in paragraph no.48 of its Order dated 25.08.2020 has elucidated the question of Judicial intervention at the stage of issuance of 'SCN' as follows:

*“48. Having considered the aforesaid judgments, we find the ratio thereof appears to be that unless there is a pure question of law involved, then in a matter which may involve a question of fact and law, an interference by the High Court under Article 226 of the Constitution of India would be a premature exercise, as held in the case of **A.Kamaraj** (supra). It has also been held that a writ of prohibition would not lie over a subject matter, where the authority under the Rules has the jurisdiction. In **Raja Ram Pal** (supra), the Constitution Bench of the Apex Court did make an observation that if it is a question of procedure, it would be premature to consider the issue, as the Committee of Privileges is yet to conclude its proceedings. It was then further held in the case of **Ratna Gupta** (supra), that it would be premature to*



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W.A.Nos.701 of 2021 etc., and batch

*presume that the report of the Privileges Committee in all probability would be adverse to the petitioners and, therefore, interference is not called for. Finally, in the case of **Kihoto Hollohan** (supra) the exceptions carved out was with regard to interference in matters of imminent interlocutory disqualifications or suspensions, which may have grave, immediate and irreversible repercussions and consequences.”*

28. The Bench further relying on the judgement of the Hon'ble Supreme Court in **Raja Ram Pal case**, had concluded the importance of Judicial restraint in matters of premature challenge to 'SCN'. More so, due to the Constitutional bar imposed under Article 212 whereby it prohibits the validity of any proceedings in legislature from being called in question in a Court merely on the ground of irregularity of procedure.

29. Hence the learned Single Judge had erred in misinterpreting the order of the Hon'ble Division Bench which did not affirm the view of interference of Courts at the stage of 'SCN' as valid but rather had held that unless there is a pure question of law involved, then in a matter which may involve a question of fact and law, an interference by the High Court under Article 226 of the Constitution of India would be a premature exercise.



W.A.Nos.701 of 2021 etc., and batch

Hence the Hon'ble Bench only examined the issue of substantive illegality and did not go into the issue of procedural irregularity.

30. With respect to writ petitions challenging 'SCN', the Hon'ble Supreme Court has laid down the principles of non-interference of Courts of Law at the stage of issuance of 'SCN' itself and the said principle can be extended to the 'SCN' issued in breach of privilege procedures also.

31. This contention is further reaffirmed in a catena of judgments. The Hon'ble Supreme Court in the case of ***Special Director and Another vs. Mohd. Ghulam Ghose and Another***¹, held that:

“5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the SCNs stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the SCN was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine,

¹ (2004) 3 SCC 440



W.A.Nos.701 of 2021 etc., and batch

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and the writ petitioner should invariably be directed to respond to the SCN and take all stands highlighted in the writ petition. Whether the SCN was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, not granted.”

32. Also in the case of ***Union of India and Another vs. Kunisetty Satyanarayana***¹, the Hon'ble Supreme Court reasoned out as to why a Writ Petition is normally not entertained against a 'SCN'. The relevant portion of the Judgement is extracted below:

“14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause

¹ (2006) 12 SCC 28



W.A.Nos.701 of 2021 etc., and batch

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notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However,



W.A.Nos.701 of 2021 etc., and batch

WEB COPY

ordinarily the High Court should not interfere in such a matter.”

33. On the question of want of Jurisdiction to issue the Notice, it is imperative to note that the earlier notice was issued for the act of bringing prohibited items and exhibiting them in the Assembly whereas the second notice was issued for the purpose of protecting Discipline, Decorum and Dignity of the Assembly in tune with the laid down standards for conduct of the Assembly. This is a matter of procedure which is clearly within the powers of the Assembly. This is an aspect of procedure adopted for conduct of the House which is a matter not to be interfered with by the Courts as enumerated in Article 212 of the Constitution of India.

34. **Article 194(3)** - *In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution forty-fourth Amendment) Act, 1978.*



W.A.Nos.701 of 2021 etc., and batch

WEB COPY 35. *Art. 212. Courts not to inquire into proceedings of the*

Legislature

(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

(b) Immunity to the Legislative Assembly proceedings on procedural irregularities:

36. Article 212(2) of the Constitution of India confers immunity on the Officers and Members of the Legislature in whom powers are vested by or under the Constitution for regulating procedure, conduct of business, maintaining order, in the legislature from being subject to the jurisdiction of the Court in respect of exercise by him of those powers. So the Courts cannot call in question a mere irregularity of procedure inside the Assembly but there must be an illegality to warrant interference. Hence since the 'SCN' in



W.A.Nos.701 of 2021 etc., and batch

question is purely on the question of procedure to be followed inside the Assembly, the 'SCN' does not suffer from want of Jurisdiction and the Courts under such circumstances cannot interfere in the normal course at the premature stage.

37. The present impugned 'SCN' dated 07.09.2020 deliberates on the following issues:

- (a) Showing Gutka sachets without permission of the Hon.Speaker
- (b) Interrupting the smooth proceedings of the Assembly
- (c) Setting a bad precedent
- (d) Creating utter commotion and chaos resulting in disturbing the Assembly proceedings.

38. A perusal of the above alleged occurrences reveal that these are matters of pure procedure with reference to the conduct of the Members inside the House and the procedures to be followed by the Members. These questions are to be deliberated before the Committee constituted and in the event of illegality in the order passed by the Committee, the Appellants are free to approach the Courts of law for appropriate remedies. But instead, to approach the Court in the initial stage of calling for explanation vide 'SCN' is



W.A.Nos.701 of 2021 etc., and batch

premature and cannot be entertained in accordance with the orders of the Hon'ble Supreme Court in myriad cases.

(c) Mechanism to regulate the smooth functioning of the House:

39. The privileges inside the House was introduced to prevent any undue interference in the working of the House and thereby enable the Members to function efficiently without unreasonable impediment.

40. The learned Single Judge has erred by imputing the Members of the Legislature in becoming Judges in their own cause. The law on the Rules of Legislative Assembly discusses the Constitution of the Privilege Committee. Rule 227 of the Tamil Nadu Legislative Assembly Rules read as follows:

“227.(1) A Committee of Privileges shall be constituted which will consist of the Leader of the House and the Leader of the Opposition and the Deputy Speaker who shall be Members ex-officio and fourteen other Members to be elected by the Assembly on a date to be fixed by the Speaker according to the principle of proportional representation by means of the single transferable vote and in accordance with the regulations framed in this behalf by the Speaker.



W.A.Nos.701 of 2021 etc., and batch

WEB COPY

(2) The Members of the Committee so elected will cease to hold office at the end of each financial year but any member shall be eligible for re-election. There shall be a fresh election before the end of the financial year for constituting the Committee for the ensuing financial year. If under any circumstances such an election is not held the existing members of the Committee will continue to hold office until new members are elected.

(3) The Deputy Speaker shall be the ex-officio Chairman of the Committee.

(4) In order to constitute a meeting of the Committee the quorum shall be five including the Chairman or the member presiding”

41. Unless the Rule per se is under challenge, the Court cannot ascribe a mark of bias to the Rule without any valid reasons. The questions of powers, privileges and immunities of the Legislature and its members are dealt with under Article 194(3), whereby, it is the privilege of the House to construe the relevant portion of Article 194(3) and determine for itself, what powers, privileges and immunities are as under:

“194. Powers, Privileges, etc., of the House of Legislatures and of the members and committees thereof-(1).....

(2)



W.A.Nos.701 of 2021 etc., and batch

WEB COPY

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, [shall be those of that House and its members and committees immediately before the coming into force of Section 26 of the Constitution (Forty-fourth Amendment) Act, 1978].”

Rule 227 having derived power from Article 194(3) cannot be questioned without sufficient reasoning.

42. Further it is relevant to place reliance on Article 194(1) of the Constitution which states that *"(1) - Subject to the provision of this Constitution and to the Rules and Standing Orders regulating the procedure of the legislature, there shall be freedom of speech in the legislature of every State."* It is made clear from the above provision that the freedom of speech in the legislature of every State is subject to the provisions of the Constitution and to the Rules and the standing orders. The rules and standing orders regulate the procedure of the legislature.



W.A.Nos.701 of 2021 etc., and batch

(d) The Powers of the Legislative Assembly to regulate its own procedure:

43. The right of the House to have absolute control of its internal proceedings is its privilege, the right to punish one for contempt may be described as its power while the right that the member shall be liable for anything said in the House may be an immunity. To prescribe a judicial review of Assembly privileges can disturb the functions of the House and cause complications. This will cause unnecessary disruption in the functioning of the House and that is primarily the reason why the House has been empowered to regulate its own functioning through Rules and standing orders. Unless there is an unlawful or illegal act inside the House warranting interference, the Courts normally refrain from interfering in the procedures of the Assembly.

(e) Malice as a ground for quashing Show Cause Notice:

44. When a 'SCN' is issued under the relevant Rules or Statutes calling upon the Member concerned to show cause, ordinarily the Member must place his case before the relevant Committee by showing cause and the Courts should be reluctant to interfere with the Notice at that stage itself unless the notice is shown to have been issued palpably without any



W.A.Nos.701 of 2021 etc., and batch

authority of law or if there is any allegations of malafidness raised against the authority issuing show cause notice.

45. Malice is a question of fact. The burden is on the person alleging malafidness to prove the same on the basis of facts that are admitted or established or provide a deducible logical conclusion. Mere allegations which are general and vague, unsupported by requisite particulars does not sufficiently establish the ground of malice.

46. Further when allegations of Malice are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of giving an opportunity of hearing to the party in their individual capacity, it is improbable to arrive at a conclusion that the action of the authority is coloured with malice.

47. In the case on hand, the members of the committee against whom malice was imputed were not given an opportunity of hearing as they were not impleaded to the Writ Petition in their individual capacity.



W.A.Nos.701 of 2021 etc., and batch

48. The writ against a 'SCN' may be entertained only on exceptional circumstances, where the authority without issued such notice is incompetent under the provisions of the Statutes or the Rules. If there is an allegation of malafide, then also writ can be entertained. In such circumstances, the authorities against whom such allegations of malafide are raised is to be impleaded as a party respondent in his personal capacity in the writ proceedings. In the absence of the same, the ground of malice at the premature stage of issuance of 'SCN' crumbles.

49. Further the argument in the language of 'personal and direct interest' as stated in Rule 228 has to be substantiated against the individual members to attract the ground of Malice. Also the Rule clearly states that any allegation of personal or direct interest against a Member shall be raised before the Chairman of the Privilege Committee and in case the allegation is against the Chairman himself then the Rule leaves the final decision to the wisdom of the Speaker, hence any imputations against any Members in the Committee is left to the final decision of the Speaker before whom the matter can be agitated when it comes to issues involving Constitution of Committee of Privileges. When there is a clear remedy in the Rules whereby a remedy of approaching the Chairman and the Speaker has been provisioned, a hastened



W.A.Nos.701 of 2021 etc., and batch

approach to the Court at such an initial stage without first raising the issue before the Committee is not sufficient enough to set aside a 'SCN'.

(f) Provision under which Show Cause Notice was issued:

50. The learned Single Judge tried to assume the role of the Speaker in presuming the provision invoked by the Speaker to issue the 'SCN'. The examination of the provision under which the 'SCN' was issued is irrelevant so long as the Speaker has the powers to issue the 'SCN'. When the power of the Speaker to issue a 'SCN' is undisputed, mere non-quoting of the relevant provision or misquoting of the provision cannot vitiate the proceedings. More so, such an argument cannot vitiate the issuance of 'SCN' itself.

51. It is well settled principle of law that mere mention of wrong provision of law, when power exercised is available, even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. An order purported to be made under a wrong provision of law does not become invalid so long as there is some other provision of law under which the order could be validly made. This by itself does not vitiate the exercise of power so long as the power does exist.



W.A.Nos.701 of 2021 etc., and batch

52. The learned Single Judge has erred in assuming the provision under which power was derived by the Speaker to issue the 'SCN'. It is irrelevant and not a point of consideration to set aside a 'SCN'.

(IV) CONCLUSION:

53. In the context of reliance made by the respondents, the propositions laid in *A.M.Paulraj's* case (supra) in paragraph no.17 holds that **“it therefore, appears to as that the 8th Legislative Assembly had the power and jurisdiction to punish the petitioner for the breach of privilege of the 7th Legislative Assembly”**

54. In paragraph no.24 of the judgement, the Full Bench carved out that **“it was clearly open to the 8th Legislative Assembly to take up the matter with regard to the breach of privilege from the stage when the report was already made to the Speaker of the House.”**

55. In the present case, it is in the stage of Show Cause Notice and admittedly no final report has been submitted to the Hon'ble Speaker of the House for taking final decision. Though the facts in *A.M.Paulraj's* case is



W.A.Nos.701 of 2021 etc., and batch

distinguishable, the legal proposition laid down by the Full Bench is that on expiry of the 7th Legislative Assembly, the proceedings initiated for breach of privilege will not lapse and the 8th Legislative Assembly is empowered to proceed with and take a final decision. Therefore, the principles in **A.M.Paulraj's** case is of no avail to the contesting respondents. The arguments in this regard by Mr.N.R.Elango learned Senior Counsel is unacceptable.

56. In **Amarinder Singh's** case also, the facts are totally incomparable. What is stated in paragraph no.72, in **Amarinder Singh's** case is about business before the Committee. The business before the Committee has been enumerated in Practice and Procedure of Parliament. Undoubtedly, all business pending before the Parliamentary Committees of Lok Sabha lapse upon dissolution of Lok Sabha. Committees themselves stand dissolved on dissolution of Lok Sabha. However, the business before a Committee which was pending during the expiry of the term of the Parliament cannot be compared with the breach of privilege proceedings initiated against the Member of Parliament. The business of Assembly and the breach of privilege proceeding initiated and referred to Privilege Committee are



W.A.Nos.701 of 2021 etc., and batch

distinct and different. Therefore, the principles laid down in *A.M.Paulraj's* case that the breach of privilege proceedings would not lapse on expiry of the term of Assembly, in our opinion, is correct proposition which is to be adopted in the present case. In *Amarinder Singh's* case, the Hon'ble Supreme Court has not held that breach of privilege proceedings will lapse on expiry of term of the Parliament. In the case of *Amarinder Singh*, after the expiry of the term of the Parliament, the Special Committee constituted, presented its report on the floor of the House, which in turn became the basis of the resolution of the Punjab Vidhan Sabha passed. Therefore, the *Amarinder Singh's* case would not suggest that breach of privilege proceedings became lapsed on account of expiry of the term of the Assembly. On this count, the respondents cannot seek exoneration from the continuance of breach of privilege proceedings initiated through the 'SCN', which is under challenge in the writ proceedings.

57. The Privileges are a part of the inherent nature of the House and the dissolution of an Assembly does not dissolve the privileges of its members once it is reconstituted. Similarly, breach of the privileges, if any, does not lapse with the dissolution of the Assembly. It gets carried forward



W.A.Nos.701 of 2021 etc., and batch

to the new Committee of Privileges to be constituted by the Hon'ble Speaker and is left before them for further deliberations. If the argument of the Learned Senior Counsel Mr.N.R.Elango is adopted, that Breach of privilege lapses with dissolution of an Assembly, the very purpose behind privileges granted to the members of the Assembly become meaningless. Utter chaos may ensue where every member will be motivated to not take the privileges seriously thereby leading to breaches and after the end of the term, on dissolution of Assembly, all such proceedings lapse and this shall go on in an endless fashion.

58. The sovereign nature of the Assembly must be respected under all circumstances and the internal conduct should be carried on smoothly for which Rules and privileges have been formulated. And any such breach of the same must be dealt with in accordance with the principles enshrined under the Tamil Nadu Legislative Assembly Rules and the Constitution of India.

59. The Legislative Assembly is a floor to voice out the concerns of the people and the privileges are extended to the Members representing the people in the Assembly to perform their functions without any undue



W.A.Nos.701 of 2021 etc., and batch

interference and to carry on the legislative affairs of the Assembly in a smooth manner. Such privileges are to be valued in the interest of the people for whom the Legislative Assembly functions. In a Democracy, People are always Supreme and the Assembly functioning in the interest of the people must ensure that its Sovereignty and Dignity remain protected under all circumstances.

60. Issues such as Breach of privileges cannot be washed away after dissolution of each and every Assembly. The Assembly and the Committee of Privileges constituted thereunder must deliberate on the issues relating to privilege breach and arrive at conclusions in the best interest of the Assembly representing the people of Tamil Nadu.

61. In view of the legal position and having not convinced with the reasoning given by the learned Single Judge for setting aside the 'SCN', this Court is of the firm opinion that the 'SCN' issued must reach its logical conclusion by following the due process as contemplated under the Tamil Nadu Legislative Assembly Rules. **The powers of the Committee of Privileges and the powers of the Hon'ble Speaker of the House would not lapse merely on account of change of Government. The notice issued by**



W.A.Nos.701 of 2021 etc., and batch

the Privilege Committee is relating to disciplinary affairs of the House.

Therefore, the proceedings will not lapse merely for the reason that the opposition party turned to be the ruling party. The nature of proceedings require a decision to be taken on merits by following due process contemplated under the Assembly Rules. Therefore, by setting aside the 'SCN', issues relating to disciplinary matters inside the House, cannot be buried. It is we the people of India constituted the Assembly under the Indian Constitution. The Assembly proceedings are to be conducted in the manner prescribed. Actions initiated must be concluded by following the procedures as stipulated under the Rules.

62. Accordingly, the following orders are passed:

(i) the Common order passed in a batch of writ petitions in W.P.Nos.13189 to 13191, 13193, 13195, 13197, 13200, 13201, 13203, 13204, 13206, 13208, 13209, 13214 to 13216, 13219, 13220 and 13504 of 2020, dated 10.02.2021 is set aside, and consequently, all the writ petitions are dismissed as not entertainable,

(ii) contesting respondents/ writ petitioners may submit their respective explanations in response to the Show Cause Notice issued,



W.A.Nos.701 of 2021 etc., and batch

(iii) the Secretary of Tamil Nadu Legislative Assembly, the Hon'ble Speaker of Tamil Nadu Legislative Assembly and the Privilege Committee of Tamil Nadu Legislative Assembly shall proceed with the Show Cause Notice, issued to the contesting respondents, by following the due process under the Tamil Nadu Legislative Assembly Rules and take final decision on merits and in accordance with law as expeditiously as possible.

63. With the above directions, all the writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(C.K.J.,)

31.07.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

1. The Speaker,
Tamilnadu Legislative Assembly,
Fort St. George, Chennai-600009

2. Privileges Committee,
Rep. By Its Chairman,
Tamilnadu Legislative Assembly,
Fort St. George, Chennai-600009



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W.A.Nos.701 of 2021 etc., and batch

S.M.SUBRAMANIAM, J.

and

C.KUMARAPPAN, J.

(sha)

Pre-Delivery Order in
W.A.Nos.701 of 2021 etc., and batch

31.07.2024